

ANDOVER ZONING BOARD OF APPEALS

Memorial Hall Library, Elm Sq., Andover

January 10, 2008

**APPROVED 6-5-08**

The meeting opened at 7:04 p.m. Present were Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown. Boy Scout Pack 79 of Andover was present to fulfill part of a rank requirement. Chair Anderson gave an overview of the ZBA.

PETITION NO. 3744

PETITIONER: Town of Andover

PREMISES AFFECTED: 80 Shawsheen Rd

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

There was a request to continue the case to February. McDonough made a motion to continue the hearing to February. The Board voted unanimously to continue the case to February.

PETITION NO. 3740

PETITIONER: Northfield Commons

PREMISES AFFECTED: 57, 59 North St., 5, 7 Webster St.

MEMBERS: Anderson, Bevacqua McDonough, Ranalli, Jeton, Brown

Smolak had requested the continued hearing be continued further to February. McDonough made a motion to continue the continued hearing to February. Ranalli seconded the motion & the Board voted unanimously to continue it to February.

PETITION NO. 3750

PETITIONER: LOWELL STREET LIMITED PARTNERSHIP

PREMISES AFFECTED: 321 Lowell St

MEMBERS: Anderson, Jeton, Ranalli, Bevacqua, Brown

There was a request to withdraw without prejudice. Jeton made a motion to allow the petition to be withdrawn without prejudice. The Board voted (5-0) to allow the petition to be withdraw without prejudice.

PETITION NO. 3751

PETITIONER: J. Zhao & M. Chen

PREMISES AFFECTED: 5 Arrowood Lane

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

There was a request to withdraw the petition. Bevacqua made a motion to allow the petition to be withdrawn. The Board voted unanimously to allow the petition to be withdrawn.

PETITION NO. 3753

PETITIONER: Chiodo

PREMISES AFFECTED: 21 Shipman Rd

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

Chris Chiodo represented the request for a 2nd story addition to a non-conforming ranch house. The lot slopes down away from the street. There will be no change in the footprint of the house. Brown noted

that the house was built in 1953 when the front setback minimum was 30', suggesting the Chiodo house may not conform to the front setback. They have spoken to their neighbors. A signed letter was submitted in support of the proposal. Ranalli made a motion to close the hearing. Brown seconded the motion & the Board voted unanimously to close the hearing. The Board waived a site view. The Board discussed the non-conforming nature of the house & how it is typical of the neighboring houses. McDonough made a motion to approve a special permit. Bevacqua seconded the motion & the Board voted unanimously (5-0) to grant a special permit. McDonough sat off the case. Brown will write the decision.

PETITION NO. 3754

PETITIONER: Butler Bank

PREMISES AFFECTED: 16 North Main St.

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

Attorney Mark Johnson represented the bank's request for a variance to hang a banner sign &/or to modify Decision No. 3670. Also present was Ann Constantine, DRB chair. Johnson argued that they do not believe it is a sign within the by law's definition because it is cloth. It is visible as you go through the drive through & snaps onto the building. The Board discussed if it is a temporary sign, because it can be easily changed. It is 16"x46". Jeton voiced concern over setting precedence. Constantine question how a sign is distinguished from a banner. Anderson stated that a sign is designed 'to attract people off site'. Constantine informed the Board that DRB considers interior, as well as on-premise signs, equally, & this proposed banner is in the public vista (in the parking lot), it would set a precedent. She asked for it to be referred back to DRB for review. Anderson explained that if the Board determines it is a sign, then they can refer them back to DRB. Brown asked if it is a sign, how does it not conform to the by law. Johnson explained that Decision No. 3700 was limited to 'no more signs'. Therefore, they would need a special permit for another sign on the building. He was unsure how to characterize the banner & whether it needs a permit. Anderson noted a technical issue with the notice: it refers to a Modification of Decision No. 3670, not 3700 as it should. Anderson suggested continuing the hearing to correct the notice, or close the hearing & deliberate if it's a sign. Anderson asked for a motion to refer the matter to DRB for advice on whether it's a sign. There was no motion. McDonough made a motion to close the hearing. Bevacqua seconded the motion. Anderson sat off the case. Ranalli commented that businesses use the outside of their buildings for signage, creating a grey area. McDonough questioned if it affected the streetscape. Jeton feels it's a sign, adding that it's a policy point of view to care about the visual aspect & it's the ZBA's job to interpret the by law. She voiced concern over the precedent, if it's not a sign & the overload on visual impact. The prior decision was clear on limiting signage. McDonough agreed with Jeton, adding that it seems the audience the banner is trying to reach is more than drive through ATM customers. Jeton commented that it's the visual equivalent of junk mail. Brown feels it's a sign & that there are no grounds for a variance hardship. Bevacqua agreed. Bevacqua made a motion to deny the variance/special permit/modification. Brown seconded the motion & the Board voted (5-0) to deny the petition. Jeton will write the decision.

PETITION NO. 3755

PETITIONER: Marathon Development

PREMISES AFFECTED: 210 North Main St.

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

Attorney Peter Caruso presented the petition. Steve Stapinski, engineer, was also present. The proposed 3-story commercial building would replace the existing residential structure. The first floor would be for retail and the second and third floors would be for professional office space. A 1952 access easement was recorded at the Registry & would provide access to the site. A copy of the 24' easement was submitted to the Chair. They are requesting variances from Sections 5.1.5, 5.3.3 & 4.1.4.4. Caruso explained that off

site parking exists within 500' of the property (across the street at Shawsheen Plaza). The Board discussed the infeasibility of off site parking, the 20/46' turning radius for emergency vehicles, & buffering/screening. Section 4.1.4.4 requires a 50' setback from existing residential structures and renders the lot unbuildable. Jeton asked how this house is different than others in the area. Stapinski explained that it is within the 200' river act boundary & the 100 year flood plain. He noted that the site floods, but not the first floor. It would be slab-on-grade construction for a new building. Caruso added that it would be of brick design to fit into the character of the neighborhood. Karen Herman, Historic Preservation Commission Chair, informed the Board that the existing building is part of the National Historic Register, is a mid-19th century structure & would require review by DRB, the Mass Historic commission & be subject to the demo delay by law. She urged the Board to keep in mind that what happens to this tenement house will impact the others. The Board discussed good design to preserve homes, moving it & the hardship. Caruso reiterated that it is in the flood plain, thus making any building difficult. Brown suggested the proposed building is too large & that the relief requested is based on the size of the proposed building. Caruso pointed out that the variances aren't too substantial. The Board waived a site view. Brown made a motion to close the public hearing. Jeton commented that the petition is incomplete. Bevacqua seconded the motion to close the hearing. McDonough agreed with Jeton & suggested keeping the hearing open to obtain more information. Bevacqua made a motion to continue to the next meeting in order to obtain more information. Brown reminded the Board that they need to believe there's a hardship; otherwise they would be dragging the hearing out. McDonough thought some of the variances have hardship. Jeton made a motion to close the hearing. The Board voted (4-1) to close the hearing. McDonough was opposed. Ranalli sat off the case. The Board then deliberated. Brown felt no hardship exists, with the exception of section 4.1.4.4. Brown made a motion to deny on lack of hardship. McDonough seconded the motion. The Board voted (5-0) to deny the petition. Brown will write the decision.

Bevacqua made a motion to go into Executive Session. Brown seconded the motion & the board voted: Bevacqua, Brown, Ranalli, Jeton, McDonough in favor. No one opposed.

PETITION NO. 3756

PETITIONER: CA Investment

PREMISES AFFECTED: 60 Canterbury St.

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

Attorney Philip Sullivan represented the petitioner's. He waived reading of the legal notice. The proposal is to construct a new 1946 sq. ft. building for exclusive use by members. They argue it is an extension of a pre-existing non-conforming use. The new building will have locker rooms, kitchen/dining food service, & a pro shop. It will have minimal impact on the neighborhood as it is closest to Rt. 495 & Scotland Dr. They have spoken with the neighbors & accommodated their concerns. There is a more than adequate number of parking spaces & access off the main drive. There will be no new drive or utilities. The Board voted to approve a special permit. Ranalli will write the decision.

PETITION NO. 3752

PETITIONER: Mobil

PREMISES AFFECTED: 139 River Rd.

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

Attorney Mark Johnson, petitioner's representative, waived reading of the legal notice. He gave an overview of the proposal: in ID District, currently used as gas station / donut shop, has been granted variances previously, has been selling gas since 1966, proposal is to eliminate a service bay to accommodate a drive through & car wash. There will be 2 fewer pumps. Underground tanks will be replaced with modern tanks. Planning Board & Conservation Commission review will come later. A

traffic technical memo was submitted on 1/10/08. [Ranalli had to leave & is therefore off the case.]

The board interrupted the hearing to take action on Northfield Commons. McDonough made a motion to continue to the 2/7/08 meeting. Bevacqua seconded the motion & the Board voted (6-0) to continue the hearing to 2/7/08.

The Board then resumed the hearing on 139 River Rd. Johnson gave an overview of the requested variances. The board discussed the requested use variance for the car wash & the proposed 5' setback, Johnson reminded the Board that all the current uses are pursuant to variances. Anderson commented that a lot was crammed on the property & with a car wash & more pavement it would be even denser. Johnson argued that public convenience is served by it, that it doesn't impact the abutters & that it is common to have a gas station & car wash together. Anderson, Brown & Jeton agreed that the dimensional requirements haven't changed & that the density is too much with the car wash. McDonough voiced concern over queuing cars. Brown voiced concern over drive through safety & maintenance of the natural slope. Johnson informed the Board that at the IDR no concerns were mentioned regarding on site flow. He asked for a moment to speak with his client about the convenience store & drive through. Jeton voiced concern about landscaping issues to ensure quality development in the ID district. Johnson came back & requested a continuance to the 2/7/08 meeting. Anderson & Brown suggested withdrawing the application. Johnson discussed this option with his client.

The board reviewed the 9/6/07 minutes.

Johnson returned & asked the Board to withdraw without prejudice. Bevacqua made a motion to withdraw without prejudice. The Board voted (5-0) to withdraw without prejudice.

The Board unanimously approved the 9/6/07 minutes.

The meeting adjourned at 9:49 p.m.